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# A Legislator's Perspective on Civil Legal Services

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## A LEGISLATOR'S PERSPECTIVE ON CIVIL LEGAL SERVICES

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### I. INTRODUCTION

*I do solemnly swear or affirm that I will support the Constitution of the United States and the Constitution of the State of Minnesota, and that I will faithfully discharge the duties of the office of member of the Minnesota House of Representatives to the best of my judgment and ability.*<sup>1</sup>

With these words, on January 4, 2011, I became a freshman member of the Minnesota House of Representatives. As a lawyer, I arrived at the legislature slightly more prepared and well-armed

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<sup>†</sup> Retired member of the Minnesota House of Representatives. J.D., William Mitchell College, 1977. I thank Judge James Swenson, former Chief Judge of Hennepin County District Court, for his insights on the impact of Civil Legal Services (CLS) in the courtroom. Judge Swenson has been consistently available to me as a legislator and as a member of the Judiciary Committee. I also thank Ron Elwood, CLS advocate. While on occasion testifying in opposition to legislation I authored, Mr. Elwood graciously listened and informed me of his reasons for opposition. He represents CLS with grace and professionalism, and serves the legislative process well.

1. See MINN. CONST. art. IV, § 8 ("Oath of office. Each member and officer of the legislature before entering upon his duties shall take an oath or affirmation to support the Constitution of the United States, the constitution of this state, and to discharge faithfully the duties of his office to the best of his judgment and ability."). On opening day of the 2011 session, the oath of office was administered to the House of Representatives by former Chief Justice of the Minnesota Supreme Court Kathleen Blatz.

than most freshman legislators. However, I was less prepared than I had expected. I had much to learn from practical experience. My perspectives on a number of policies were to be challenged and on-the-job seasoning was yet to occur. With so much to learn and experience, my personal, political, and judicial predispositions were yet to mature. Like the first weeks of law school, legislative duty began as a surreal new world, a torrent of instructions, lobbyists, advocates, reading, opinions, procedures, and people. All was a blur with no framework on which to organize concepts or to facilitate memory and understanding. With competing constituencies and multiple levels of representation, I had to sort out how I was to approach representation. To whom was my primary allegiance owed? What places do district, state, party, and personal philosophy play in responsible representation?

Soon state agency representatives, constituents, lobbyists, and judges scheduled appointments to express positions and advocate for concerns and issues or to offer informational background on government functions with which I might be dealing. Even the Chief Justice of the Minnesota Supreme Court scheduled time with me to discuss the judiciary generally. Never had I been shown such unwarranted attention.

But while basking in perceived popularity, I quickly concluded why such attention was being shown. As a legislative vote, I was in a position of significant responsibility. The potential consequences of bad judgment, bad facts, bad advice, or misperception are damaging to responsible legislation. I was to learn that these visitors, mostly lobbyists, were the people who know the issues, advocate positions, and upon whom I would rely while forming my own perspectives.

A commonly used term describing office holders (I used it often while campaigning) is "public servant." I now believe that description to be imprecise. A servant serves at the express direction of a master. A secondary definition of "servant" is "[s]omeone expressing submission, recognizance, or debt to another."<sup>2</sup> That definition connotes that an elected representative is to carry on his or her responsibility in submission to the people,

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2. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1184 (1979).

voting as the majority directs, perhaps determining the public's will by survey, who speaks loudest, or most frequently.

I believe a more apt term is "steward," defined as "[o]ne who manages another's property, finances, or other affairs."<sup>3</sup> In the case of government, office holder stewardship is management of the public affairs of the people. With that belief, I attempted to approach all decisions from a stewardship perspective, charged with oversight of matters that affect the daily affairs of others.

I entered the legislature with a political philosophy formed by years of personal experience. My fundamental philosophy did not change. But with the perspective of a steward, I viewed the task ahead as an elected representative to encompass gathering relevant information, determining priorities, and voting in the best interests of the whole with multiple constituencies.

It had been over thirty years since I had passed the bar exam. I spent the first twelve years in private practice, with much litigation. An area of legislative responsibility over which I felt particular call to stewardship is the judiciary. I learned that stewardship extends beyond the state's system of courts to the entire network of boards, commissions, and agencies that intermediate the courts with the public. The effective, efficient operation of the judicial system depends upon adequate functioning and funding of all of its parts.

## II. THE LEGISTAURE'S ROLE IN THE JUDICIARY

The state budget is a construction of nine budget laws, each covering budgetary expense for a separate state agency or function-of-state expense. Each of those nine budgets is the responsibility of a finance committee in the House of Representatives and in the State Senate. Among those funded functions is the state's judicial system, for which the House Judiciary Policy and Finance Committee is responsible.

I was pleased to be appointed to that committee by the Speaker of the House, an assignment that I had requested. While separation of power among branches of government prevents control, balance of power prescribes legislative authority for setting policy and state budget funding for the judiciary.

Primarily, the judiciary budget funds the district courts and courts of appeal. However, the judicial system is far more than the courts. It includes auxiliary court and judicial functions such as the

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3. *Id.* at 1265.

tax courts, the administrative courts, the Guardian Ad Litem Commission, the public defender's office, the Board of Judicial Standards, and Civil Legal Services (CLS). The state judiciary budget includes allocations of funds for all of these.

The Judiciary Policy and Finance Committee also hears testimony on policy relating to the courts and auxiliary entities. Early in session, before bills begin their legislative journey by introduction in committee, committee meetings are filled with background testimony. This is particularly true of finance committees with budget responsibility.

In the first few weeks of session, while I was eagerly awaiting the real work of reading bills and casting a vote, committee meetings consisted of hours of testimony from the experts, commissioners, judges, and court management—all part of that initial torrent of information for which I had no framework. All courts, boards, and commissions appear through representatives before the Judiciary Committee, some appearing a second and third time, primarily to educate the committee on their purpose, plans, issues, and budget needs.

My perspective about the judicial system, but especially about CLS, was quite narrow prior to my legislative education and seasoning of experience. My understanding of the public good offered by CLS did not extend beyond the most obvious personal benefit to individual users of CLS services. With time, I learned otherwise. CLS changed my perception as a steward of the judiciary and, more broadly, as a steward of our system of justice.

### III. CIVIL LEGAL SERVICES

In courts across the country, more claimants are appearing without professional representation than ever before. Courts, once appearing to be an intimidating assembly of suited professionals using unfamiliar words and arcane rules, appear now to be a forum for unrepresented claimants telling their story, laced with irrelevant accusations and comments. In the public's perception (or misperception), Perry Mason has been replaced by Judge Judy. Fictional television that is actually closer to real life has been replaced by reality TV. In thirty minutes (with commercials) justice is rendered on the spot by a judge acting as questioner, arbiter, and even at times, as advocate. This false TV familiarity breeds comfort, and the impression of lax procedure breeds confidence in success. There is far less hesitance to use the courts in an environment

made familiar by television and far more inclination to believe that the courts are a proper forum for resolution of any perceived wrong.

But the real world of everyday judiciary is not Judge Judy's courtroom. Justice is best served when judges serve as impartial arbiters among professionally represented parties, when rules and procedures protecting the process are studied and practiced.

CLS aids the administration of justice. It serves as a gatekeeper to proper use of the courts, as a supporter of alternative resolution, and as an advocate and representative to facilitate fairness and judicial efficiency. CLS counsels those who might otherwise enter the courts without representation, providing professional advice, realistic expectations, and potential avenues for alternative resolution.

CLS is a gatekeeper to the courts. Meritless cases filed with the courts pose a frustrating and resource-draining dilemma for the judiciary. Our system allows any aggrieved claimant their "day in court." But meritless cases slow justice for those with merit. When dismissed for reasons not understood by unrepresented litigants, they contribute to distrust of the system. As a gatekeeper, CLS mitigates the court's caseload. CLS attorneys offer practical legal advice. By properly identifying issues and realistically assessing opportunity for prevailing in court, they contribute to the proper use of the courts for merited claims. CLS attorneys assist not only the courts, but also the aggrieved by diverting unwarranted claims from the courts and redirecting cases that may more properly be resolved in an alternative manner.

CLS is a contributor to the orderly and judicious disposition of cases. A key responsibility in legal representation is to establish reasonable expectations. Only then will litigants pursue more satisfying alternative methods of disposition and feel satisfied that they have received justice. CLS representation further assures disposition that is fair to the litigant and commensurate with established practice and precedent. Procedural integrity is preserved with competent, professional follow-up to judgment, access to procedural motions and all available legal and procedural arguments.

Professional representation and advocacy of participants in the judicial system has obvious benefit to CLS clients. The benefit to the courts is less obvious but even more impactful. The reality TV perception is that judges advocate, take a sympathetic side in

litigation, and make rulings and eventual judgments on unspecified and subjective right and wrong. Only with an impartial judge and fully represented litigants can justice be effectively and efficiently administered. CLS facilitates that result.

#### IV. PERSPECTIVES OF A STEWARD

Viewing my legislative and Judiciary Committee role as a steward, my responsibility is to promote effectiveness in the administration of justice, efficiency in implementation of laws and regulations, integrity of the judicial system, and public confidence in the Judicial Branch. CLS performs a valuable purpose in accomplishing all of these objectives.

To be effective, Minnesota courts must have the time and resources to dispose of cases needing court involvement. At the commencement of the 2011 legislative session, the state faced a projected biennium budget deficit of over \$6 billion. While balancing the budget, Judiciary Committee hearings and discussions clearly showed that decreased funding to the judiciary would significantly hinder the effectiveness of the judiciary.

The judiciary budget was not decreased. This evidences the legislative priority of a sound judiciary in Minnesota. It also evidences that our courts have no excess capacity.

As a gatekeeper, CLS plays a critical role in controlling the number of filed court cases. A frequently stated opinion in committee testimony is that the burden of non-represented clients is a significant factor in delaying hearings and overburdening the courts. To the extent that potential claimants seek CLS counsel and are advised that they have no actionable claim or opt for an alternative resolution to filing a case, the CLS gatekeeper role results in a reduction of filed cases in Minnesota. Of the more than 4400 cases handled by the Legal Aid Society of Minneapolis in 2011 not requiring administrative advocacy, approximately 98% did not require judicial intervention.<sup>4</sup> Without CLS advice, many cases would have entered the courts with pro se litigants. If half of those 98% filed a case pro se, the number of filed civil cases in Hennepin County—44,442 in 2011—would have increased by nearly 5%.<sup>5</sup> In a

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4. Ron Elwood, Legal Aid Society of Minneapolis, Report to the Legal Services Advisory Council (2011) (on file with Ron Elwood, Supervising Attorney, Legal Services Advocacy Project).

5. Ken Bergstrom, Civil Cases Filed in Hennepin County District Court (2011) (on file with Ken Bergstrom, Senior Planning Analyst, Hennepin County

judicial system that is already struggling—threatening jams and lacking time and money in a difficult financial environment—this reduction in cases is significant to the system's effectiveness.

Another manner in which CLS contributes to reduction of court expenses is by employing multilingual lawyers. Courts are required to provide interpreters for litigants. This is costly to the courts and it diminishes confidence in the judiciary when judgments are not understood or court-designated interpreters are not trusted. Enhancing the court's effectiveness and decreasing cost, CLS serves a multiethnic, multilingual population and employs multilingual lawyers as advocates.

Efficiency in implementation means that justice is attained with the least distraction, least irrelevance, and least number of resolvable disputes going to trial. In self-represented hearings, when judges are required to explain the rules, correct misstatements, or navigate around irrelevance, efficiency suffers. This not only burdens the courts but increases costs and delays justice to other litigants waiting their turn. Self-represented litigants put the court in the uncomfortable and potentially conflicted position of having to assist them through trial. In Minnesota, well over 90% of all filed cases settle out of court. Lowering that settlement rate only minimally may significantly increase the trial burden and impede justice for all litigants. Self-represented litigants may overburden the courts procedurally or pursue claims through trial with unreasonable expectation of success.

The integrity of the judicial system requires that resolutions are just, whether reached by settlement or verdict. Judges cannot be burdened with the responsibility of assuring that each self-represented client has full benefit of available legal strategy and procedure. CLS professional representation eliminates that responsibility.

Public confidence in the judicial system requires that those engaged with it have had their grievance decided with adequate legal advocacy and that they have been treated fairly and without bias. Litigants must have a realistic expectation of what the system can provide and what it cannot provide. Confidence is generated

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District Court, Fourth Judicial District of Minnesota) (including civil cases filed in Conciliation Court and Housing Court). This data was also gathered with assistance from Susan Ledray, Senior Manager, Pro Se Services, Hennepin County District Court, Fourth Judicial District.



among those whose experience with the system matches their expectations. The function served by CLS in properly advising and establishing reasonable expectations serves to enhance confidence in the administration of justice.

#### V. WORKING WITH THE LOBBYISTS

What may not seem relevant to CLS or to legislative perspectives is the role of lobbyists. Prior to my legislative experience, I misunderstood the importance of lobbyists in achieving legislative effectiveness. Just as in the courtroom, knowledgeable experts are necessary for research and advocacy of positions. Much like a judge depends upon the professional advice and arguments of competing advocates, a legislator depends upon lobbyists to provide advocacy for and perspective on legislative issues, as those issues affect their clients. When done professionally and ethically, the sum of all information from committed advocates leads to an understanding that is richer and more representative of how proposed legislation will impact the lives of Minnesota's citizens.

The role of a lobbyist includes not only advocacy but legislative support, testimony in committee, and research for committee and floor debate. As advocates and as representatives needing to be trusted, lobbyists inform members of the legislature of the consequences of their bills, which include the personal stories that make lawmaking meaningful. Professional lobbyists generate trust by presenting arguments for both sides of an issue and alerting legislators of who will be lobbying against their interests. Just as in the courtroom, more relevant information is better than less, and lobbyists are there as a resource as well as an advocate for their own specific interests.

Lobbyists support the legislative process in multiple ways. They may draft bills and seek authorship by a legislator, most often a member of the majority caucus on the committee that will first hear the bill. I felt enormously complimented and amazed at the respect I received from the Minnesota Bar Association and other judicially related interests in my freshman year. I came to understand that being one of only a handful of lawyers in the majority caucus on the Judiciary Committee attracted that attention.

Lobbyists offer legislative support to move a bill to passage, assisting the bill's author in finding support within the author's

own chamber and an author in the other legislative body. Most lobbying efforts are directed at members of committees needing to pass a bill before it gets to a House floor vote. When there is a helpful amendment proposed, the lobbyist is often the person who deals with the revisor's office to amend a bill's language.

Lobbyists often provide technical support for the committee hearing by providing background research and talking points. They often testify and schedule other testifiers for committee testimony.

In short, lobbyists can provide much needed assistance in garnering necessary facts and arguments for bill introduction, committee testimony, and floor debate. Much like the advocating lawyer in the courtroom, the lobbyist serves as the advocate who brings forward the necessary information and arguments to be analyzed and weighed by the legislator.

Lobbyists are a critical ingredient of a healthy legislative system. Trust, candor, and principle among legislators and lobbyists serve the legislative process well. The advocate for CLS is one with whom I often disagreed on policy issues. He testified in opposition to several bills that I authored. However, he is one whom I learned to trust for well-researched, accurate information as well as strong advocacy. I was pleased to be able to work with him on some legislation of common support.

## VI. CONCLUSION

As a freshman legislator, I found my role perspective change from public servant to steward of public affairs. As I considered stewardship responsibility for the judicial system, my perspective of the role of CLS also changed. In first reaching the legislature, I perceived CLS to be a very small but important element of the system. The only apparent benefit of which I was aware was providing adequate representation to those unable to afford it. As a steward of the judicial system, my perspective changed to viewing CLS as a valuable element to judiciary effectiveness, efficiency, integrity, and public confidence.

All parts of the judicial system work in harmony to attain the justice our citizens expect. The courts rely upon good representation and reasonable expectations from its litigants in order to efficiently carry out justice. In a culture in which access to courts is a right of citizenship, there will be messiness. CLS serves to reduce that messiness by acting as gatekeeper, reasoned

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advocate, and practical advisor to those who cannot afford such representation. CLS facilitates confidence in the system.